

REMARKS

Claim 1 is amended to recite the inner and outer layers in consisting language. Also, Claims 1 and 2 are combined. It is respectfully submitted this is not new matter.

I. Claim Objection

Claim 5 is amended as helpfully suggested by the Examiner.

II. 35 USC §102 - Asai

Claims 1, 4, 6, 8-15 and 18-23 are rejected under 35 USC §102(b) as being anticipated by Asai et al. (US 5,780,158, hereinafter "Asai").

Claims 1 and 2 are combined. Thus, this rejection is moot.

III. 35 USC §103 - Asai

Method of making Claims 16 and 17 are rejected under 35 USC §103(a) as being unpatentable over Asai.

It is respectfully submitted these claims distinguish over the reference at least as does their base claim.

IV. 35 USC §103 - Hasegawa et al

Claims 1, 3-4 and 6-23 are rejected under 35 USC §103(a) as being anticipated by Hasegawa et al. (US 5,618,621, hereinafter "Hasegawa").

Claims 1 and 2 are combined. Thus, this rejection is moot.

Moreover, Hasegawa teaches an outer layer A (comprising a polyester having ethylene terephthalate as the main unit) and an inner layer B (comprising a polyester having 60-99 wt % of an ethylene terephthalate unit, and 1-40 wt % of a butylene terephthalate).

The argument the Office action makes for doubling layer B would mean that the adhesion layer would also be B. A layer consisting of a mixture of PBT and PET has a poor adhesion. Moreover, that is not what is claimed. Claim 1 recites a PET-based inner layer. For good adhesion the adhesion layer should be as amorphous as possible.

PET/PBT-based layers are less amorphous than PET-based layers and thus not useful for adhesion layers.

Although different from the assumption of a structure the Office action appears to make on the basis of Hasegawa, Applicants note the application discloses results of testing two layer systems (ex. 2 and 3 on page 11) consisting of an adhesion layer PET/PETG and PET or PET/PBT. The results show neither was satisfactory. Ex. 2 did not work because the Tg of the outer layer is too low thereby causing softening of the layer during canmaking and sticking to the tools. Ex. 3 did not withstand dome growth and therefore did not retain its barrier properties. This would not be different if the outer layer was split in two layers.

V. 35 USC §103 - Majima et al in view of Hasegawa et al

Claims 1-2 and 4-23 are rejected as being unpatentable over Majima et al. (US 6,780,482, hereinafter Majima) in view of Hasegawa.

The Office action asserts Majima discloses metal sheets having a polyester film thereon (col. 1, lines 8-10). The film comprises a blend of PBT and PET (col. 4, lines 16-28). This film may be attached to the substrate with any of a list of adhesives (col. 11, lines 51-55). One of the members of the list is polyester-based adhesive.

A. The present inner and middle layers are not the same material

The Office action acknowledges Majima is silent with regard to the adhesive layer comprising PET.

However, the Office action asserts it would be obvious to make the adhesive layer out of PET to "ensure the film adequately bonds with the adhesive layer since like-materials readily bond."

Applicants submit amended Claim 1 recites the inner layer consists of at least one member of the group consisting of (i) PET, (ii) PET modified with at least one member of the group consisting of iso-phthalic acid and cyclohexane dimethanol thereof, as a layer for bonding the system to the substrate. In contrast, the middle layer consists of a blend of PET and PBT.

B. The motivation of Hasegawa to add a PET outer layer does not apply where there is already a PET layer

The Office action acknowledges Majima is silent with regard to an outer layer comprising PET having a glass transition temperature of at least 70° C. Thus, the Office action adds an outer layer from Hasegawa because Hasegawa teaches a PET outer layer having a glass transition temperature higher than 10°C to maintain flavor retention (col. 4, lines 8-11).

It is respectfully submitted the motivation of Hasegawa to add a PET outer layer does not apply. The structure created by the Office action already has a PET layer, namely the inner layer.

Hasegawa did not have an inner PET layer. Thus, Hasegawa has an outer PET layer. In particular, Hasegawa teaches an outer layer A (comprising a polyester having ethylene terephthalate as the main unit) and an inner layer B (comprising a polyester having 60-99 wt % of an ethylene terephthalate unit, and 1-40 wt % of a butylene terephthalate).

In contrast, the structure proposed by the Office action has a PET inner layer.

There is no motivation to add an outer layer of PET if an inner layer of PET is already present.

VI. Conclusion

In view of the above it is respectfully submitted all objections and rejections are overcome. Thus, a Notice of Allowance is respectfully requested.

Respectfully submitted,

NOVAK DRUCE & QUIGG LLP

Dated: November 14, 2008

By: /anthony p venturino/
Anthony P. Venturino
Registration No. 31,674

NOVAK DRUCE & QUIGG LLP
1300 Eye Street, N.W., Suite 1000 West Tower
Washington, DC 20005
202-659-0100 (telephone)
202-659-0105 (facsimile)

Attorney Docket No. 8459.013.US0000
APV/bms